



6325-39

## **U.S. OFFICE OF PERSONNEL MANAGEMENT**

### **5 CFR Part 315**

**RIN: 3206-AM64**

#### **Career and Career-Conditional Employment**

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is proposing to change the regulations on creditable service for career tenure. The proposed regulation removes the requirement for creditable service to be substantially continuous. This change will assist individuals who leave Federal service before meeting the requirement and subsequently return to a qualifying appointment.

**DATES:** We will consider comments received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Send or deliver comments to Kimberly A. Holden, Deputy Associate Director for Recruitment and Hiring, Employee Services, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC, 20415-9700; e-mail to [employ@opm.gov](mailto:employ@opm.gov); or fax to (202) 606-2329. Comments may also be sent through the Federal eRulemaking Portal at <http://www.regulations.gov>. All submissions received through the Portal must include the agency name and docket number or the Regulation Identifier Number (RIN) for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Pam Galemore by telephone at (202) 606-0960; by TTY at (202) 418-3134; by fax at (202) 606-2329; or by email at [pamela.galemore@opm.gov](mailto:pamela.galemore@opm.gov).

**SUPPLEMENTARY INFORMATION:** The U.S. Office of Personnel Management (OPM) is proposing to revise part 315, title 5, Code of Federal Regulations (CFR), to change the criteria for career tenure in the Federal competitive service. The current regulations require an employee to serve a 3-year period of substantially continuous creditable service to attain career tenure. With certain exceptions, the current regulations also require a career-conditional employee who separates from Federal service to re-start the 3-year period if there is a break in service of more than 30 days.

OPM is proposing to change the requirement from 3 years of substantially continuous service to at least 3 years of total creditable service (whether or not continuous). This change will remove the basis for the 30-day break-in-service rule. Under the proposed rule, each period of creditable service would stand alone, so breaks in service would be irrelevant.

In the Federal competitive service, tenure is important for the purposes of reinstatement eligibility and retention standing in a reduction in force (RIF). An employee who separates from the Federal service with career tenure, or a veterans' preference eligible who separates with career-conditional tenure, has lifetime reinstatement eligibility. Generally, a non-veterans' preference eligible employee who separates with career-conditional tenure has only 3 years of reinstatement eligibility from the date of separation. (Reinstatement eligibility means the individual does not have to re-compete with the general public for a future competitive service appointment.) An

employee with career tenure also has higher retention standing in a RIF than a career-conditional employee. (RIF is the regulatory process an agency uses when it must reduce the number of positions in its workforce, for example, due to budget constraints. The higher an employee's retention standing, the more opportunities the employee may have to keep a Federal job under RIF procedures.)

OPM is proposing to revise the regulations in response to an issue raised by the Department of the Army in relation to military spouses. A Federally employed spouse may have to resign his/her appointment to accompany a military "sponsor" (in this context, meaning a spouse who is serving in the military) when the sponsor must relocate under permanent change of station (PCS) orders. Many spouses are unable to obtain another Federal job within the 30-day break period. The 30-day break requirement left these spouses at a disadvantage in attaining career tenure. When reemployed, they have to re-start the 3-year period, basically resulting in a perpetual career-conditional tenure status due to the constant PCS movement of their spouses.

In response to the issues raised by the Department of the Army, OPM decided to review not only the 30-day break requirement, but also the basis for the "substantially continuous" creditable service requirement for career tenure. We have determined that the "substantially continuous" requirement is no longer appropriate in today's employment environment.

The "substantially continuous" requirement has been in place since the career-conditional system was established in the mid-1950s. The rationale for the requirement was that 3 years was an appropriate amount of time to determine an employee's interest in and commitment to the career Federal service, as well as the Government's ability to

provide reasonable assurance of continued employment opportunities. OPM believes this reasoning no longer applies in today's work environment. Individuals in today's workforce may change jobs, including between the Federal and private sectors, throughout their careers and are more mobile than in previous generations. OPM believes both sectors can benefit from the experiences gained from the other so individuals should not be penalized if they choose to or must, as circumstances dictate, leave Federal service before meeting a substantially continuous service requirement. We believe 3 years in the aggregate – even if not continuous – is sufficient to demonstrate an interest in Federal service that warrants granting an individual career tenure.

Therefore, OPM is proposing to change 5 CFR 315.201(a) to remove “substantially continuous” from the requirement for career tenure. Under this change, an individual may attain career tenure after completing at least 3 years of creditable service as described in section 315.201(b). Each period of creditable service would stand alone. Once the employee accumulates 3 years of creditable service, he/she would be converted to career tenure.

We also are proposing to revise section 315.201(b) to reflect this change and to remove references to outdated and obsolete appointing authorities. The introductory text of section 315.201(b) is reworded but would continue to specify that creditable service for career tenure must include service described in section 315.201(b)(1). We also are removing some repetitive verbiage from the introductory text.

Section 315.201(b)(1) specifies that the 3 years of creditable service must begin with one of the nontemporary appointments listed in paragraphs (i) through (xvi) of section 315.201(b)(1).

Section 315.201(b)(1)(i) describes the qualifying nontemporary appointments in the competitive service that begin eligibility for career tenure. This paragraph retains career-conditional appointment and status quo employment as qualifying beginning appointments. We removed “reinstatement” and “transfer” as beginning appointments because the 30-day break rule no longer applies under the proposed change; therefore, neither a reinstatement nor a transfer will begin a 3-year period of service as it does under the current regulations. The proposed revision of paragraph (b)(1)(i) would consolidate the list of obsolete appointing authorities by incorporating certain items that were previously listed in separate paragraphs under section 315.201(b)(1), including certain excepted appointments before 1955 and temporary appointments pending establishment of a register. We are also revising the relevant paragraphs under section 315.201(b)(1) to reflect the July 10, 2012, effective date of the Pathways regulations in 5 CFR parts 213 and 362.

Other proposed revisions to paragraphs under section 315.201(b)(1) reflect statutory or regulatory changes that have occurred since the last revision to this section, for example, in (b)(1)(iii) to add nonappropriated fund positions in the U.S. Coast Guard under the Department of Homeland Security and in (b)(1)(viii) to change the name of the Postal Rate Commission to the Postal Regulatory Commission. Proposed paragraph (b)(1)(ix) revises the text to conform to proposed regulations published in the Federal Register on February 7, 2012 (77 FR 6022) pertaining to the appointment of persons with disabilities.

We are revising section 315.201(b)(2), Competitive status, to clarify that an individual may attain career tenure only when employed (or reemployed) in a permanent appointment in the competitive service that provides or leads to competitive status.

We are removing section 315.201(b)(3), Substantially continuous service, and redesignating the remaining paragraphs in section 315.201(b). The current regulation to begin a new 3-year period after a break in service of more than 30 days will not apply under the proposed rules removing the “substantially continuous service” requirement.

We are revising section 315.201(b)(4)(i)(B) (redesignated as section 315.201(b)(3)(i)(B) in the proposed rule) to refer agencies to OPM’s Guide to Processing Personnel Actions to convert intermittent days worked to calendar time. We are removing paragraph (b)(4)(i)(C) relating to part-time and intermittent service before July 1, 1962, because it is obsolete.

In proposed section 315.201(b)(3)(ii) - the current section 315.201(b)(4)(ii) - we are revising the text from passive to active voice. We are also proposing to update the regulation by adding a new paragraph (G) to specify that periods of nonpay status incident to an assignment under subchapter VI of chapter 33, title 5, U.S. Code, [Assignments To and From States (also known as the Intergovernmental Personnel Act)], are creditable service for career tenure.

In what is currently section 315.201(b)(4)(iii), Restoration based on unwarranted or improper actions, which we are proposing to redesignate as section 315.201(b)(3)(iii), we are removing the obsolete paragraph (A), relating to findings made before March 30, 1966, that a furlough, suspension, or separation was unwarranted or improper.

In proposed section 315.201(b)(3)(iv) – the current section 315.201(b)(4)(iv), Intervening service – we are removing from the introductory text the reference to breaks in service in excess of 30 calendar days as obsolete under the proposed rule. Also, under paragraph (b)(4)(iv)(H) of section 315.201, regarding crediting service performed overseas by family members, we are removing the 180-day limitation for crediting such service. Under the proposed rule, each period of creditable service will stand alone, so breaks in service will be irrelevant.

#### **E.O. 12866, Regulatory Review**

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

#### **Regulatory Flexibility Act**

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

#### **Paperwork Reduction Act**

The information collection requirements contained in this proposed rule are currently approved by the Office of Management and Budget under 3206-A120. This regulation does not modify this approved collection.

## **List of Subjects in 5 CFR Part 315**

Government employees.

U.S. Office of Personnel Management.

---

Katherine Archuleta,  
Director.



Accordingly, OPM proposes to amend 5 CFR part 315 as follows:

## **PART 315 - CAREER AND CAREER-CONDITIONAL EMPLOYMENT**

1. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577, 3 CFR, 1954-1958 Comp. p. 218, unless otherwise noted; and E.O. 13562. Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104. Sec. 315.603 also issued under 5 U.S.C. 8151. Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp. p. 111. Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964-1965 Comp. p. 303. Sec. 315.607 also issued under 22 U.S.C. 2506. Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp. p. 293. Sec. 315.610 also issued under 5 U.S.C. 3304(c). Sec. 315.611 also issued under 5 U.S.C. 3304(f). Sec. 315.612 also issued under E.O. 13473. Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp. p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp. p. 264.

2. In § 315.201, revise paragraphs (a) and (b) to read as follows:

### **§ 315.201 Service requirement for career tenure.**

(a) Service requirement. A person employed in the competitive service for other than temporary, term, or indefinite employment is appointed as a career or career-conditional employee subject to the probationary period required by subpart H of this part. Except as provided in paragraph (c) of this section, an employee must serve at least 3 years of creditable service as defined in paragraph (b) of this section to become a career employee.

(b) Creditable service. Unless otherwise approved by OPM, the service required for career tenure must include service as described in paragraph (b)(1) of this section and total at least 3 years.

(1) Nontemporary employment. To be creditable, the 3 years of service must begin with one of the following:

(i) Nontemporary appointment in the competitive service. For this purpose, nontemporary appointment includes a career-conditional appointment. The 3 years may also begin, but not end, with status quo employment under subpart G of part 316 of this chapter, and overseas limited appointment of indefinite duration or overseas limited term appointment under part 301 of this chapter. The 3 years also may have begun with permanent employment under now obsolete appointing authorities such as probational, war service indefinite, emergency indefinite, nontemporary appointment from a civil service register to a position in the excepted service before January 23, 1955, temporary appointment pending establishment of a register (also known as TAPER authority), nontemporary appointment to a position in the District of Columbia Government before January 23, 1955, and appointment based on P.L. 83-121. Determinations of whether an obsolete authority provides the basis for creditable service may be obtained from OPM;

(ii) Nontemporary appointment to an excepted position, provided the employee's excepted position was brought into the competitive service and, on that basis, the employee acquired competitive status or was converted to a career-conditional appointment;

(iii) Nontemporary appointment to a nonappropriated fund (NAF) position in or under the Department of Defense or in or under the U.S. Coast Guard, Department of Homeland Security, provided the employee's NAF position was brought into the competitive service and, on that basis, the employee acquired competitive status or was converted to a career or career-conditional appointment;

(iv) Nontemporary excepted or nonappropriated fund appointment, Foreign Service appointment, or appointment in the Canal Zone Merit System, provided the

employee is appointed to a competitive service position under the terms of an interchange agreement with another merit system under § 6.7 of this chapter, under Executive Order 11219 as amended by Executive Order 12292, or under Executive Order 11171;

(v) The date of appointment to a position on the White House Staff or in the immediate office of the President or Vice President, provided the service has been continuous and the individual was appointed to a competitive service position under § 315.602 of this chapter;

(vi) The date of nontemporary excepted appointment under § 213.3202(b) of this chapter (the former Student Career Experience Program) as in effect immediately before July 10, 2012, the effective date of the regulations removing that paragraph, provided the student's appointment was converted to a career or career-conditional appointment under Executive Order 12015 or under Executive Order 13562, with or without an intervening term appointment, and without a break in service of one day;

(vii) The date of veterans recruitment appointment (VRA), provided the appointment is converted to a career or career-conditional appointment under § 315.705 of this chapter, or the person is appointed from a civil service register without a break in service while serving under a VRA;

(viii) The date of nontemporary appointment to the Postal Career Service or the Postal Regulatory Commission after July 1, 1971, provided the individual is appointed to a career or career-conditional appointment under 39 U.S.C. 1006;

(ix) The date of nontemporary appointment under Schedule A, § 213.3102(u) of this chapter, of a person with an intellectual disability, severe physical disability, or a

psychiatric disability, provided the employee's appointment is converted to a career or career-conditional appointment under § 315.709;

(x) The date of appointment in the Presidential Management Fellows Program under the provisions of Executive Order 13318, provided the employee's appointment was converted without a break in service to a career or career-conditional appointment under § 315.708 as in effect immediately before July 10, 2012, the effective date of the regulations that removed and reserved that section, or under Executive Order 13562;

(xi) The starting date of active service as an administrative enrollee in the United States Merchant Marine Academy;

(xii) Appointment as a career intern under Schedule B, § 213.3202(o) of this chapter, provided the employee's appointment was converted to a career or career-conditional appointment under § 315.712 as in effect immediately before July 10, 2012, the effective date of the regulations that removed and reserved that section;

(xiii) The date of appointment as a Pathways Participant in the Internship Program under Schedule D, § 213.3402(a) of this chapter, provided the employee's appointment is converted to a career or career-conditional appointment under § 315.713(a), with or without an intervening term appointment, and without a break in service of one day;

(xiv) The date of appointment as a Pathways Participant in the Recent Graduates Program under Schedule D, § 213.3402(b) of this chapter, provided the employee's appointment is converted to a career or career-conditional appointment under § 315.713(b), with or without an intervening term appointment, and without a break in service of one day;

(xv) The date of appointment as a Pathways Participant in the Presidential Management Fellows Program under Schedule D, § 213.3402(c) of this chapter, provided the employee's appointment is converted to a career or career-conditional appointment under § 315.713(c), with or without an intervening term appointment, and without a break in service of one day; and

(xvi) Employment with the District of Columbia Government after January 1, 1980 (the date the District implemented an independent merit personnel system not tied to the Federal system), provided the person was a District employee on December 31, 1979, was converted to the District system on January 1, 1980, and is employed by nontemporary appointment in the competitive service.

(2) Competitive status. An individual may attain career tenure only when employed (or reemployed) in a permanent appointment in the competitive service that provides or leads to competitive status.

(3) Crediting service. An employee's creditable service must total at least 3 years, under the following conditions:

(i) Work schedule. (A) Full-time service, and part-time service on or after July 1, 1962, are counted as calendar time from the date of appointment to date of separation.

(B) Intermittent service on or after July 1, 1962, is counted as 1 day for each day an employee is in pay status, regardless of the number of hours for which the employee is actually paid on a given day. Agencies should consult the “260-Day Work Year Chart” in OPM’s Guide to Processing Personnel Actions to convert intermittent days worked to calendar time. The service requirement may not be satisfied in less than 3 years of calendar time.

(ii) Nonpay status on the rolls and time off the rolls. An agency may not credit periods of nonpay status and time off the rolls except as follows:

(A) Credit the first 30 calendar days of each period of nonpay status on the rolls during full-time employment, or during part-time employment on or after July 1, 1962. On this same basis, a seasonal employee receives credit for the first 30 calendar days of each period of nonduty/nonpay status. Nonpay status in excess of 30 days is not creditable.

(B) Credit periods of nonpay status and time off the rolls incident to entry into and return from military service and return from defense transfer, provided the person is reemployed in Federal service during the period of his or her statutory or regulatory restoration or reemployment rights.

(C) Credit periods of nonpay status and time off the rolls incident to transfer to and return from an international organization, provided the person is reemployed in Federal service under subpart C of part 352 of this chapter.

(D) Credit periods of nonpay status during which an employee was eligible to receive continuation of pay or injury compensation from the Office of Workers' Compensation Programs. Also credit periods of time off the rolls during which an employee was eligible to receive injury compensation from the Office of Workers' Compensation Programs, provided the person is reemployed under part 353 of this chapter.

(E) Credit up to 30 calendar days for time off the rolls that follows separation by reduction in force of employees who are eligible for entry on the reemployment priority

list under subpart B of part 330 of this chapter, provided the person is reemployed in Federal service during the period of his or her reemployment priority.

(F) Credit up to 30 calendar days for time off the rolls that follow involuntary separation without personal cause of employees who are eligible for a noncompetitive appointment based on an interchange agreement with another merit system under §6.7 of this chapter, provided the person is employed in the competitive service under the agreement during the period of his or her eligibility.

(G) Credit periods of nonpay status incident to an assignment to a State, local, or Indian tribal government, institution of higher education, or other eligible organization provided the employee returns to a creditable appointment pursuant to an agreement established under subchapter VI of chapter 33, title 5, U.S.C., and part 334 of this chapter.

(iii) Restoration based on unwarranted or improper actions. Based on a finding made on or after March 30, 1966, that a furlough, suspension, or separation was unwarranted or improper, an employee restored to duty receives full calendar time credit for the period of furlough, suspension, or separation for which he or she is eligible to receive back pay. If the employee is restored to duty at a date later than the original adverse action, credit for intervening periods of nonpay status is given in accordance with other provisions of this subsection. If the employee had been properly separated from the rolls of the agency before a finding was made that the adverse action was unwarranted or improper, the correction and additional service credit given the employee may not extend beyond the date of the proper separation.

(iv) Intervening service. Certain types of service that ordinarily are not creditable are counted when they intervene between two periods of creditable service. Under these conditions, credit each period of service:

(A) In the excepted service of the Federal executive branch, including employment in nonappropriated fund positions in or under any Federal agency;

(B) Under temporary, term, or other nonpermanent employment in the Federal competitive service;

(C) In the Senior Executive Service;

(D) In the Federal legislative branch;

(E) In the Federal judicial branch;

(F) In the armed forces;

(G) In the District of Columbia Government through December 31, 1979. For an employee on the District rolls on December 31, 1979, who converted on January 1, 1980, to the District independent personnel system, credit also is given for service between January 1, 1980, and September 25, 1980. Otherwise, service in the District of Columbia Government on or after January 1, 1980, is not creditable as intervening service; and

(H) Performed overseas by family members, as defined by § 315.608 of this chapter.

\* \* \* \* \*

[FR Doc. 2013-31499 Filed 01/03/2014 at 8:45 am; Publication Date: 01/06/2014]